THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.528 OF 1999

DATED: 31.10.2007

Between:

Ellesha

.. Petitioner

And

The Ministry of Labour, Govt. of India, New Delhi, rep. by its Secretary and another.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.528 OF 1999

ORDER:

This writ petition is filed being aggrieved by a letter No.L-12012/239/96/IR (B-II), dated 28.07.1997, addressed by the Desk Officer, Ministry of Labour, Government of India, whereunder the Government of India refused to refer the dispute raised by the petitioner through Union to the Industrial Tribunal for adjudication.

There is no necessity of going into all the details.

The relevant portion of the impugned letter, dated 28.07.1997, reads as under:

> "I am directed to refer to the failure of conciliation report No.7/16/95 dated 12.08.96 from the Asst. Labour Commissioner (c), Hyderabad received in this Ministry on 09.09.96 on the above subject and to say that prima facie this Ministry does not consider this dispute fit for the following reasons:
>
> It has been reported that the workman was engaged for a total period of 205 days during 2 years and 4 months time and he has not completed 240 days of service in any completed 12 calendar months preceding the date of his termination. Hence, provisions of Sec.25 of the ID Act, 1947 are not attracted. Hence, no Industrial Dispute subsists."

From the above, it is clear that the Government, while considering reference of the dispute to Industrial Tribunal/Labour Court for its adjudication, went into the merits of the case by stating that it has been reported that the workman was engaged for a total period of 205 days during the 2 years and 4 months time and he has not completed 240 days of service in any completed 12 calendar months preceding the date of his termination. Such exercise ought not to have been taken up by the 1st respondent Ministry. It is for the Labour Court/Industrial Tribunal to go into such facts, if necessary, and to come to a proper conclusion, but the Ministry was not supposed to give such finding and reject the case on merits.

Under those circumstances, the impugned letter, dated 28.07.1997, is set aside and the 1st respondent – Ministry of Labour, Government of India, is directed to refer the dispute raised by the petitioner to the appropriate Industrial Tribunal for its adjudication.

The writ petition is, accordingly, allowed. No order as to costs.

C.V. RAMULU, J

31st October, 2007.

IBL